

**REMARKS**

**Status of the Claims**

No Amendments have been made to the claims. Thus, claims 34-67, 69 and 70 are pending in the application.

**I. Claim Rejections Under 35 U.S.C. §103**

Claims 34-38, 43, 45-54, 59-60, 62-67, 69 and 70 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Neraal (GB 968,331) in view of Wulf et al. (Relationships among glycolytic potential, dark cutting (dark, firm, and dry) beef, and cooked beef palatability).

Neraal describes adding an additive that contains an acid to stabilize the pH of a meat. See Page 1, Lines 66-76. In Neraal, this control of the pH is desirable to prevent oxidation of myoglobin into metamyoglobin, and therefore to prevent the color change of the meat from ordinary red to lighter gray. See Page 1, Lines 39-50. Neraal does not recognize dark cutter meats as a problem, and is in fact adding the additive to the meat in order to preserve a red color, not to lighten it. In fact, Neraal adds acid to prevent meat from lightening –not to lighten it.

Wulf et al. indicates that dark cutter meats result from lower than normal amounts of lactic acid production after slaughter and higher than normal ultimate meat pH. Wulf then states that the objective of the study is to determine the relationship between glycolytic potential (“GP”) and dark, firm and dry (“DFD”) beef to determine the effects of DFD status and GP and beef palatability. Wulf does not purpose a solution to dark cutter issues, and does not suggest the treatment to reduce pH post rigor will affect color.

Nothing in either Neraal nor Wulf suggests that one could combine these two references. That is, there is no motivation to combine a reference treating meat to prevent it from lightening with a reference studying the effect of DFD status and GP on beef palatability. The mere mention of pH in both is not sufficient. This combination would not be made without reference to the present claims, and therefore the Office Action relies on impermissible hindsight.

This is particularly the case since a series of physiological observances regarding the state of meat that is dark cutter meat are noted in Wulf and there is no reason to expect the condition of the meat could be reversed by selecting one of the conditions (pH) and trying to counteract it by administration of a pH lowering agent at a time not recognized to be significant in the prior art (post rigor). The identification of treatment of this type of meat in this manner at

this stage to achieve this result is invention. It is improper to stitch together references that mention the key words of meat and pH, and to then insert that the treatment of this long-standing problem is now obvious because various elements are independently known. *See KSR International Company v. Teleslex, Inc.* 550 U.S. \_\_, \_\_, 82 USPQ2d 1385, 1396 (2007) *cited in MPEP 2143.01.*

Moreover, the Office Action suggests that the lightening effect would have been expected to take place as an inherent result of the pH reduction treatment. See Office Action page 4. This is incorrect. Neraal does not start with dark cutter meat, but rather with ordinary red meat. Thus, there is no inherent lightening that can take place. In contrast, the meat that is treated in Neraal is specifically treated to *avoid* lightening (i.e., graying) of the meat. Thus, Neraal suggest that treating the meat to lower the pH would avoid lightening of the meat.

The Office Action also states that “the combination of references disclose the same starting materials and methods as instantly (both broadly and more specifically) claimed.” See Office Action page 4. This too is incorrect. As noted above, Neraal does not start with a dark cutter meat, but with ordinary red meat. A combination of these references is an artificial construction, and inherency does not apply because the indicated outcome does not automatically occur in all circumstances of even a hypothetical combination of references. See, *In re Cruciferous Sprout Litigation*, 64 USPQ2d 1202 (Fed. Cir. 2002).

For these reasons, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 39-42 and 55-58 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Neraal (GB 968,331) in view of Wulf et al. (Relationships among glycolytic potential, dark cutting (dark, firm, and dry) beef, and cooked beef palatability), as applied to claim 34 and further in view of Formanek et al. (US 6,379,739).

Formanek et al. discloses tumbling, injecting, marinating or drip/rest of meat in the presence of a citric acid system. Formanek, however, does not bridge the gap between the present claims and Neraal in combination with Wulf.

Accordingly, reconsideration and withdrawal of this rejection is therefore respectfully requested.

Claims 44 and 61 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Neraal (GB 968,331) in view of Wulf et al. (Relationships among glycolytic potential, dark

cutting (dark, firm, and dry) beef, and cooked beef palatability), as applied to claim 34 and further in view of Holdren et al. (US 5,736,186).

Holdren is cited for its teaching regarding the use of encapsulation of acidulants. Holdren, however, does not bridge the gap between the present claims and Neraal in combination with Wulf.

Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

**II. Conclusion**

In view of the remarks, it is respectfully submitted that the foregoing is fully responsive to the outstanding Office Action. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact the undersigned representative at (952) 742-5301.

Respectfully submitted,

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